

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1347 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

=====

1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

PRADIP KALYANSINH JETHWANI (SINDHI)

Versus

POLICE COMMISSIONER

Appearance:

MS JAYSHREE C BHATT for Petitioner

MR HH PATEL, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 23/11/1999

ORAL JUDGEMENT

1. The petitioner came to be detained under the provisions of Gujarat Prevention of Anti Social Activities Act, 1985 [for short, 'the PASA Act'] by virtue of an order passed by Police Commissioner, Ahmedabad city on 13th February 1999 in exercise of powers under sub-section [1] of section 3 of the PASA Act.

2. The detaining authority in the grounds of

detention considered that two offences under the Bombay Prohibition Act are registered against the petitioner / detenu. That he is involved in this activity to an extent that he would fall within the definition of bootlegger as defined u/s 2[b] of the PASA Act. The detaining authority also considered the statements of witnesses who out of fear of the petitioner, did not lodge a complaint. The detaining authority, therefore, in exercise of powers u/s 9[2] of the PASA Act, refused to disclose the identity of the witnesses claiming privilege. The detaining authority considered other less drastic remedies in the nature of proceedings u/s 93 of the Bombay Prohibition Act and ultimately concluded that detention under the PASA was the only remedy for preventing the petitioner from pursuing his illegal and anti social activities.

3. The petitioner has challenged the detention order on various grounds, one of which is that the order suffers from non-application of mind as the detaining authority has not considered the availability of a less drastic remedy in the nature of cancellation of bail granted to the petitioner.

4. Ms. Bhatt, learned Advocate appearing for the petitioner has restricted her arguments to this ground alone and submitted that the order would be vitiated in light of decision of a Division Bench of this Court [Coram : C.K.Thakkar & A.L.Dave, JJ] in Letters Patent Appeal No. 1056/99 in Special Civil Application No.8650/98 in case of Yunusbhai Hasanbhai Ghanchi v/s District Magistrate, dated 15th September, 1999.

5. Mr. H.H.Patel, learned AGP for the respondents has opposed this petition stating that subjective satisfaction is well founded and non-consideration of this particular alternative remedy has not caused any prejudice to the petitioner. The petition therefore may be dismissed.

6. It is not factually disputed that the detaining authority has not considered the possibility of availing remedy of cancellation of bail u/s 437[5] of the Code of Criminal Procedure. This is a clear non-application of mind, as has been held by this Court in the case of Yunusbhai Hasanbhai Ghanchi [supra].

7. In view of above, the petition deserves to be allowed on this ground alone and the same is allowed accordingly. The impugned order of detention passed by the Police Commissioner, Ahmedabad city, Ahmedabad on

13th of February, 1999 in respect of the petitioner Pradip Kalyansinh Jethwani, is hereby set aside. The petitioner be set at liberty forthwith, if not required to be detained in custody for any other case. Rule is made absolute accordingly with no orders as to costs.

[A.L.DAVE, J.]

parmar*